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Office Supreme Court
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JAMES H. McKENN

SUPREME COURT OF THE UNITED STATES

In the matter of the petition

of

ROBERT W. WORKMAN for a writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

PETITION

WING, SHOUDY & PUTNAM

Proctors for Petitioner

UNITED STATES CIRCUIT COURT OF APPEALS 1

FOR THE SECOND CIRCUIT.

ROBERT W. WORKMAN,
Libellant and Appellee,

AGAINST

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, and JAMES A. GALLAGHER, 2
Respondents and Appellants.

Notice is hereby given that upon the petition of the libellant above named, verified the 14th day of May, 1895, and upon all the pleadings and proceedings herein, we shall, on Monday, the 20th day of May, 1895, at the opening of the Court on that day, or as soon 3 thereafter as counsel can be heard, submit a motion, a copy of which is herewith served upon you, to the Supreme Court of the United States, at the Capitol, in the City of Washington.

New York, May 14th, 1895.

WING, SHOUDY & PUTNAM,
Proctors for Libellant.

To FRANCIS M. SCOTT, ESQ.,
Proctor for Respondents, the Mayor, Aldermen and Commonalty of the City of New 4
York.

GEORGE L. STERLING, ESQ.,
Proctor for Respondent Gallagher.

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To the Supreme Court of the United States:

The petition of Robert W. Workman for a writ of *certiorari* to the Judges of the United States Circuit Court of Appeals for the Second Circuit to bring before the Supreme Court of the United States a certain suit in admiralty wherein he is libellant against the Mayor, Aldermen, and Commonalty of the City of New York, impleaded with James A. Gallagher, respondents, respectfully shows:

6 FIRST.—At all the times hereinafter mentioned the libellant was a resident of Belfast, Ireland, and the owner of the British barkentine *Linda Park*.

SECCND.—On the 11th day of June, 1893, while said vessel was lying at pier 48, East River, in the City of New York, properly moored to the pier, where she had a right to be, the fireboat *New Yorker*, under the command of the respondent Gallagher, entered the
7 slip at about 4.30 P. M. for the purpose of assisting another fireboat in putting out a fire on shore near the pier, and negligently collided with said barkentine, to the libellant's damage in the sum of $690.36.

THIRD.—On the 27th day of July, 1893, the libellant filed his libel in the District Court of the United States for the Southern District of New York, against the respondents, the Mayor, Aldermen, and Commonalty of the City of New York, to recover the damages sustained by said collision. Thereafter the libel was amended
8 so as to make the Fire Department of the City of New York and James A. Gallagher, the pilot of the fireboat *New Yorker*, parties respondent.

FOURTH.—The Mayor, Aldermen, and Commonalty of the City of New York were, at the times herein mentioned, the owner of the fireboat *New Yorker*, which was under the exclusive direction and in the keeping and custody of the Fire Department of said city.

FIFTH.—The District Court dismissed the libel as to 9
the Fire Department, and held the respondents, the Mayor, etc., and the pilot Gallagher responsible for the damages sustained by the collision, and a decree was accordingly entered in the District Court on the 28th day of August, 1894, in favor of the libellant for $815.84, including interest and costs. The District Judge held that "by the maritime law both the vessel and the owner are ordinarily liable for such a marine tort. But if the vessel is in the public service she is not allowed to be withdrawn therefrom by arrest and 10
sale for reasons of the public convenience" (The *Fidelity*, 16 Blatch., 569). * * *

"But it is obvious that the fireboat *New Yorker*, at the time she inflicted this injury, was not in the service of the State, nor performing any duty of the State. The extinction of fires is not a duty of the State, nor a work which the State has ever undertaken to perform, as a part of its general governmental functions. The State was certainly not the principal in the navigation of the *New Yorker*. Only the corporation or the Fire Department, as an independent 11
legal entity, could, therefore, be the principal; and if the Fire Department is not an independent legal entity capable of being sued, as the defendant contends, then, inasmuch as the City Corporation owned the vessel, appointed the heads of the Fire Department, and put the vessel in their charge to be navigated for this very work, the corporation must be responsible, in the view of the maritime law, as the only legal principal in the case. To absolve itself it must show some other independent legal principal in charge of the navigation. The *F. C. Latrobe*, 28 Fed. Rep., 377."
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The District Judge made a careful review of the decisions of the Court of Appeals of the State of New York on the respective rights and obligations of the City of New York and the Fire Department, and concluded that, even under the decisions of the State of New York, the City was liable for the acts of the employees of the Fire Department. He also relied on the decision of this Court in the case of Barnes *v.* District of Columbia, 91 U. S., 540.

SIXTH.—Appeal having been taken from the decree of the District Court, the United States Circuit Court of Appeals for the Second Circuit rendered a decision on April 16th, 1895, affirming the decree of the District Court as to the pilot Gallagher, and reversing it as to the Mayor, etc., and dismissing the libel as to the Mayor, etc., with costs. The opinion of said Circuit Court of Appeals was rendered by Judge Wallace, who sustained the finding of the District Court as to the negligence of the fireboat, but held that for this negligence the municipality was not liable. In his opinion he said that "in selecting and employing" the officers and agents of the Fire Department "the municipality merely performs a political or governmental function; the duties intrusted to them do not relate to the exercise of corporate powers; and hence they are the agents or servants of the public at large." Accordingly he held that the municipality was not liable for the negligence of the fireboat.

He said further that "accountability, either personally or on the principle of agency, must concur with injury to give a cause of action in any tribunal, equally in admiralty as at common law."

SEVENTH.—Thereafter the libellant duly filed his petition to said United States Circuit Court of Appeals, praying for the certification to this Court of the questions involved herein as follows:

1. Whether the City of New York is liable for the negligent navigation of a fireboat in respect to a collision with a British vessel which at the time is moored alongside a wharf within the municipality?

2. Whether the liability of a municipal corporation for a wrongful collision on navigable waters by a city fireboat is to be determined by the municipal law and statutes of the State of New York or by the principles of the maritime law?

3. Whether the admiralty recognizes any exemption in favor of a municipality owning and operating a

vessel upon navigable waters for the purpose of extinguishing fires? 17

4. Whether the liability of a municipal vessel owner for negligent collision depends in the admiralty upon the doctrine of *respondeat superior*, or is incidental to ownership, even if the pilot in charge be not the servant of the owner.

5. Whether the rules of the State common law courts, in respect to a trespass by a fire engine on land, are to be followed by the Federal courts, sitting in admiralty, in determining the liability of a city for maritime torts by a steam fireboat? 18

6. Whether a State has the power to authorize a municipality to use a steam vessel in navigable waters, and exempt the municipal owner from the liabilities imposed on other vessel owners.

On May 6th, 1895, said Circuit Court of Appeals denied the application for certification aforesaid, and 19
made an order reversing the decree of the District Court as against the Mayor, etc., and directing the issuance of a mandate accordingly.

EIGHTH.—Your petitioner avers that this case is one in which it is proper for this Court to issue a writ of *certiorari* for the following reasons:

1. The questions involved are of great importance, and have never been passed upon by this Court.

2. There is no controversy as to the facts, both the 20
District Court and the Circuit Court of Appeals having found that the collision was due to the negligence of the fireboat. The questions therefore are purely questions of law.

3. The Circuit Court of Appeals based its decision upon the municipal law as interpreted by the common law courts of the several States. In its opinion it cited no decision in the admiralty, and but one federal

21 case (Weightman *v.* Washington, 1 Blatch., 39), which was an action upon the case at common law.

In the case of the *China*, 7 Wallace, 68, the Supreme Court said:

"The maritime law as to the position and powers of the master and the responsibility of the vessel *is not derived from the civil law of master and servant, nor from the common law.*" * * * "The remedy of the damaged vessel, if confined to the culpable pilot, would frequently be a mere delusion. He would often
22 be unable to respond by payment, especially if the amount recovered were large. Thus, where the injury were greatest, there would be the greatest danger of a failure of justice."

4. One of the principal questions involved is a constitutional question, namely, the power of a State to authorize a municipality to use a steam vessel in navigable waters, and exempt the municipal owner from the liabilities imposed on other vessel owners.

23 5. The *Linda Park* is a British vessel, and the petitioner is a British subject. By the application by the Circuit Court of Appeals of a distinction made by the New York Courts between the various departments of the City of New York, a foreign vessel coming to the principal port of this country, although free from fault, cannot recover against the city for collision with a municipal boat, if it happens to belong to one department rather than another.

In the case of Jones *v.* the Mersey Docks (L. R. 1
24 H. of L., 122, 123), Lord Chancellor Cranworth said:

"It would be a strange distinction to persons coming with their ships to different ports of this country, that in some ports if they sustain damages by the negligence of those who have the management of the docks, they will be entitled to compensation, and in others they will not; such a distinction arising not from any visible difference in the docks themselves, but from some municipal difference in the constitution of the bodies by whom the docks are managed."

6. Similar actions are pending in other districts, for

which reason questions of such importance and far- 25
reaching results should be decided by this Court.

Wherefore your petitioner prays that this Honorable Court will be pleased to grant a writ of *certiorari* in this cause to the United States Circuit Court of Appeals for the Second Circuit, to bring this cause before this Honorable Court, and for such other relief as to this Honorable Court may seem just.

ROBERT W. WORKMAN,
Petitioner. 26

By WING, SHOUDY & PUTNAM,
his proctors.

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.:

HARRINGTON PUTNAM being duly sworn, says that he is a member of the firm of Wing, Shoudy and Putnam, proctors for the libellant, Robert W. Workman, and is authorized to make this verification on his own 27
behalf, the libellant being absent from the United States and residing in Belfast, Ireland; that he has read the foregoing petition and knows the contents thereof, and that the same is true to the best of his knowledge. The sources of deponent's knowledge and the grounds of his belief are found in the proceedings and in the record of the cause in the District Court and in the United States Circuit Court of Appeals.

HARRINGTON PUTNAM.

Sworn to before me this } 28
14th day of May, 1895. }

[SEAL] JAMES FORRESTER,
Notary Public Kings County.
Certificate filed in N. Y. County.

I hereby certify that I have examined the foregoing petition, and that, in my opinion, the petition is well founded, and that the same is one in which the prayer of the petitioner should be granted.

JAMES K. HILL.